

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JEFFREY DAVID VOLOSIN,

Petitioner,

v.

TIM GARRETT, *et al.*,

Respondents.

Case No. 3:23-cv-00362-MMD-CSD

SCHEDULING ORDER

On May 15, 2024, this Court granted Petitioner Jeffrey David Volosin's motion for appointment of counsel and gave the Federal Public Defender 30 days to (1) undertake direct representation of Volosin by filing a notice of appearance or (2) indicate the office's inability to represent Volosin in these proceedings. (ECF No. 37.) On June 14, 2024, the Federal Public Defender filed a notice of appearance. (ECF No. 39.)

It is therefore ordered that the Federal Public Defender, through Laura Barrera, Esq., is appointed as counsel for Jeffrey David Volosin under 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Volosin in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

It is further ordered that Volosin shall have up to and including 90 days from entry of this Order within which to file an amended petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Volosin remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any deadlines established or extensions granted herein. That is, by setting a deadline to amend the petition and/or by granting any extension thereof, the Court makes no finding or representation that the petition, any amendments thereto, and/or any claims contained

1 therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235
2 (9th Cir. 2013).

3 It is further ordered that Respondents shall file a response to the amended petition,
4 including potentially by motion to dismiss, within 60 days of service of an amended petition
5 and that Volosin may file a reply thereto within 30 days of service of the answer. The
6 response and reply time to any motion filed by either party, including a motion filed in lieu
7 of a pleading, shall be governed instead by Local Rule LR 7-2(b).

8 It is further ordered that any procedural defenses raised by Respondents to the
9 counseled amended petition shall be raised together in a single consolidated motion to
10 dismiss. In other words, the Court does not wish to address any procedural defenses
11 raised herein either in seriatum fashion in multiple successive motions to dismiss or
12 embedded in the answer. Procedural defenses omitted from such motion to dismiss will
13 be subject to potential waiver. Respondents shall not file a response in this case that
14 consolidates their procedural defenses, if any, with their response on the merits, except
15 under 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
16 Respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
17 do so within the single motion to dismiss not in the answer; and (b) they shall specifically
18 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett*
19 *v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
20 including exhaustion, shall be included with the merits in an answer. All procedural
21 defenses, including exhaustion, instead must be raised by motion to dismiss.

22 It is further ordered that, in any answer filed on the merits, Respondents shall
23 specifically cite to and address the applicable state court written decision and state court
24 record materials, if any, regarding each claim within the response as to that claim.

25 It is further ordered that any state court record and related exhibits filed herein by
26 either Volosin or Respondents shall be filed with a separate index of exhibits identifying
27 the exhibits by number. The CM/ECF attachments that are filed further shall be identified
28 by the number or numbers of the exhibits in the attachment. If the exhibits filed will span

1 more than one ECF number in the record, the first document under each successive ECF
2 number shall be either another copy of the index, a volume cover page, or some other
3 document serving as a filler, so that each exhibit under the ECF number thereafter will be
4 listed under an attachment number (*i.e.*, attachment 1, 2, etc.).

5 It is further ordered that courtesy copies of exhibits shall not be provided.

6 DATED THIS 14th Day of June 2024.

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9 MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE